

SECTION BY SECTION ANALYSIS OF S. 1035

Section 1 (a). Prohibits inquiry of an applicant or employee concerning his race, religion, or national origin. It does permit inquiry into the national origins of an employee when such inquiry is determined necessary or advisable to determine suitability for assignment to activities or undertakings related to the national security within the United States or to activities or undertakings of any nature outside the United States.

This section does not impinge on current Agency practices.

Section 1 (b). Prohibits taking notice of attendance or lack of attendance at any assemblage, discussion, or lecture held or called by the Executive Branch or by any outside parties or organizations to advise, instruct, or indoctrinate any employee in respect to any matter or subject other than the performance of official duties.

The purpose of this section is to protect employees from compulsion to attend meetings, discussions, and lectures on political, social, and economic subjects unrelated to his duties.

The language is so broad that it can be interpreted to prohibit taking notice of the attendance of an employee at meetings of subversive organizations or meetings which might gain notoriety for the employee.

If this section should be so interpreted we could not discipline an employee even though we know he regularly attends meetings of the Communist party or other meeting of notorious groups which bring participants to public notice.

Section 1 (c). Makes it unlawful to require or request an employee to participate in any activity or undertakings unless they are related to the performance of official duties to which he is or may be assigned.

This section does not affect current Agency practices.

Section 1 (d). Makes it unlawful to require an employee to make any report of his activities or undertakings not related to the performance of official duties unless there is reason to believe that the employee is engaged in outside activities or employment in conflict with his official duties. It is in serious conflict with long-established policy of requiring employees to obtain prior clearances on publications and speeches, to report contacts with foreigners, sponsorship of foreigners entering the United States, and other contacts which may create security risks.

Section 1 (e). Prohibits the use of psychological testing which is designed to elicit from the employee information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters. "Personal relationship" deals

with such questions as "Do you love your mother?". These questions may be asked only on the determination by a physician that they are necessary to enable him to determine whether or not an employee is suffering from mental illness.

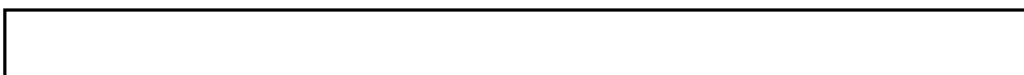
Section 6 of the bill provides an exemption for the Agency on a personal finding by the Director in each individual case that such questions are required to protect the national security. All Agency employees are given a psychological test called a "personal index" by the medical staff at the time they enter on duty. This is a battery of tests which include questions of the proscribed nature. Our medical staff considers these tests essential for screening out unsuitable applicants. Under Section 6 it would be necessary for the Director to make several thousand personal findings each year if we are to continue the use of the test currently given.

Section 1 (f). Prohibits the use of a polygraph test designed to elicit from the employee information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices or concerning his attitude or conduct with respect to sexual matters.

The purpose is not to prohibit the use of the polygraph but to prohibit its use to elicit information considered to be of a personal nature.

The polygraph has been an extremely useful aid in disclosing sexual deviation which generally is not discovered in the course of field investigation.

Under Section 6 the Director may make exceptions permitting inquiry into the prohibited areas on the basis of a personal finding in each individual case that the test is required to protect the national security. At the current level of polygraph testing within the Agency this would require



Section 1 (g). Makes it unlawful to require an employee to support the nomination or election of anyone to public office.

This section has no impact on current Agency practices.

Section 1 (h). Makes it illegal to coerce or attempt to coerce an employee to invest in bonds or other government obligations or securities, or to make donations to any institution or cause.

This section does not affect current Agency practices.

Section 1 (i). Makes it illegal to request any employee to disclose any items of his property, income, or other assets, source of income, or liabilities. The first proviso permits requests for financial statements from those employees who have authority to make final determination with respect to claims which require expenditure of monies of the United States.

Section 6 grants an exemption to the Agency based on a personal finding by the Director in each individual case that the information is required to protect the national security. The number of exceptions involved under current practices would be nominal.

Section 1 (j). Makes it illegal to request financial disclosure from those employees subject to such request under the first proviso of subsection (i) other than specific items tending to indicate a conflict of interest. The purpose of this section is to abolish and prohibit broad general inquiries which have been likened to "fishing expeditions", and to confine any disclosure requirements imposed on an employee to reasonable inquiries about job-related financial interests.

There are no objections to this section which are peculiar to the Agency. The section is badly drafted and most certainly will raise questions of interpretation.

Section 1 (k). Makes it unlawful to require an employee who is under investigation for misconduct to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice if he so requests.

This right inures to the employee at the inception of the investigation and does not require that the employee be accused formally of any wrongdoing before he may request presence of counsel or friend. The section does not require the agency or department to furnish counsel.

The right to counsel at the inception of an investigation is totally incompatible with the security requirements of the Agency. Presumably, if a supervisor asks an employee why he has been late for the preceding three days the employee is entitled to counsel at this stage. This section

would directly impinge on current Agency policy requiring employee explanations of security violations. It is unacceptable to the Agency as it would require that the Agency provide a security clearance to the counsel of the employee's choice prior to interrogating him, or in the alternative in the conduct of such interrogation to refrain from any discussion of classified matters.

Section 1 (1). Makes it unlawful to discharge, discipline, demote, deny promotion, relocate, reassign, or otherwise discriminate against an employee by reason of his refusal or failure to submit to or comply with any requirement made unlawful by this act.

This section threatens the termination authority of the Director which thus far has not been limited by judicial decision. In particular, litigation challenging a termination action almost certainly would require the court to satisfy itself that no violation of the act was involved in the termination action. This in turn would impinge on the exemption created by the Central Intelligence Act of 1949 exempting the Agency from any provision of law requiring the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency, as it would be necessary to surface Agency personnel, functions and organization to the court to prove the real basis of the termination.

Section 2. This section is intended to insure that the Civil Service Commission, acting as the coordinating policymaking body in the area of Federal civilian employment, shall be subject to the same strictures as the individual departments or agencies.

It has no impact on CIA.

Section 3. This section applies the act to military supervisors by making violations of the act also violations of the Uniform Code of Military Justice.

It has no impact on the Agency.

Section 4. This section permits any employee or applicant who alleges that an officer of the Executive Branch has violated or threatened to violate provisions of the act to bring civil action in the district courts.

Combined with Section 1 (1) it provides a disgruntled employee who has been terminated with a new issue to contest the Director's termination authority. More important, it provides those who wish to harass the Agency with a dangerous weapon. No longer would it be necessary for leftwing student groups to picket our recruiters. They would now get in the interview line and thereafter allege a violation of the provisions of this act. A determined group could entangle our recruiters in lawsuits in every state in the Union. Should they progress past the recruiter, they could do the same with personnel officers, security investigators, and medical staff. It also provides the Soviets with a very useful tool should

they desire to harass us in the United States. It should be noted that no provisions are made for handling classified matter.

Section 5. Establishes an independent Board on employees rights to provide applicants or employees with an alternative means of obtaining administrative relief from violations of the act short of recourse to the judicial system. It creates the same potential for harassment as Section 4, although it would probably be less spectacular than resort to the courts and result in less publicity. If the employee loses his case before the Board, he can still take it to the courts.

Section 6. Permits the CIA and NSA to request employees or applicants to take a polygraph test or psychological testing designed to elicit information concerning his personal relationship to any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters, or to provide a personal financial statement if the Director makes a personal finding with regard to each individual case that the test or information is required to protect the national security.

As previously noted, this would impose an impossible burden on the Director if we are to follow current security practices.

Section 7. Exemption for the Federal Bureau of Investigation.

Section 8. Permits the establishment of internal grievance procedures.



Section 9. This is the standard separability clause stating that if any provision of this act is held invalid, the remainder shall not be affected.